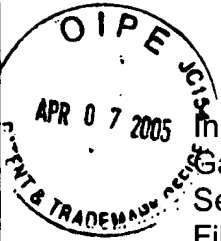


4-8-05

ERN 3731/\$

PATENT  
Attorney Docket No. 102.0003-04000  
Customer No. 22882



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No. 6124
Gary Karlin Michelson, M.D.	)	
Serial No.: 09/626,636	)	Group Art Unit: 3731
Filed: July 27, 2000	)	Examiner: U. Ho
For: A GUARD FOR USE IN	)	
PERFORMING HUMAN	)	
INTERBODY SPINAL SURGERY	)	
(as amended)	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL**  
Express Mail@ Mailing Label No. ED151082721US  
Date of Deposit: April 6, 2005

I hereby certify that:

1. Transmittal Form (in duplicate; total amount of \$1,020.00 to cover the three-month extension fee is to be charged to Deposit Account No. 50-1068)
2. Reply to Office Action
3. Declaration Under 37 C.F.R. § 1.131 with 7 sheets of photographs
4. Self-addressed return postcard receipt

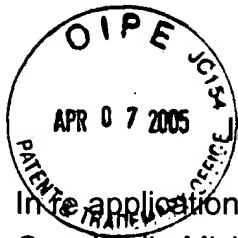
are being deposited with the United States Postal Service Express Mail Post Office to Addressee with sufficient postage under 37 C.F.R. § 1.10 on the date indicated above and are addressed to:

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Date: April 6, 2005

  
Sandra L. Blackmon

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson, M.D.

Serial No: 09/626,636

Filed: July 27, 2000

For: A GUARD FOR USE IN  
PERFORMING HUMAN INTERBODY  
SPINAL SURGERY (as amended)

Confirmation No. 6124

Art Unit: 3731

Examiner: U. Ho

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450


Dear Sir:

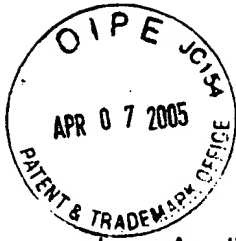
Transmitted herewith is a Reply to the Office Action dated October 8, 2004 in the above-identified application.

- ☐ No additional fee is required.
- ☒ A Declaration Under 37 C.F.R. § 1.131 with 7 sheets of photographs is attached.
- ☒ Applicant hereby requests a three-month extension of time to respond to the above Office Action.
- ☒ A fee in the total amount of \$1,020.00 to cover the three-month extension fee is to be charged to Deposit Account No. 50-1068.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. **A copy of this sheet is enclosed.**
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

04/11/2005 AWONDAF1 00000043 501068 09626636  
01 FC:1253 1020.00 DARespectfully submitted,  
MARTIN & FERRARO, LLP

Date: April 6, 2005

By:   
Thomas H. Martin  
Registration No. 34,3831557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No. 6124
Gary Karlin Michelson, M.D.	)	
Serial No.: 09/626,636	)	Group Art Unit: 3731
Filed: July 27, 2000	)	Examiner: U. Ho
For: A GUARD FOR USE IN	)	
PERFORMING HUMAN	)	
INTERBODY SPINAL SURGERY	)	
(as amended)	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO OFFICE ACTION**

In reply to the Office Action dated October 8, 2004, the period for reply having been extended for three (3) months by a request for extension and fee payment filed concurrently herewith, the following remarks are submitted as follows:

In the Office Action, the Examiner rejected claims 172-189, 196-206, 243, 244, 247-269, 276-288, and 331 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,489,307 to Kuslich et al. ("Kuslich"); and rejected claims 190-195, 205-242, 245, 246, 270-275, and 287-330 under 35 U.S.C. § 103(a) as being unpatentable over Kuslich in view of Codman (Signature Series 4 ruptured cervical intervertebral discs). Submitted together with the Reply is a Declaration of Gary K. Michelson under 37 C.F.R. § 1.131 to remove Kuslich as a reference for Applicant's claimed apparatus.

Applicant submits that independent claims 172, 176, 207, 248 and 289 are patentable and that dependent claims 173-175, 177-206, 208-247, 249-288, and 290-331 dependent from one of independent claims 172, 176, 207, 248 and 289, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.


In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

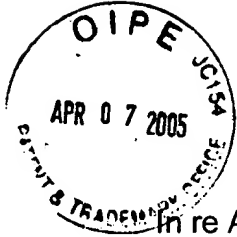
Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: April 6, 2005

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No. 6124
Gary Karlin Michelson, M.D.	)	
Serial No.: 09/626,636	)	Group Art Unit: 3731
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INTERBODY SPINAL SURGERY	)	
(as amended)	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450


Sir:

**DECLARATION UNDER 37 C.F.R. § 1.131**

I, Gary K. Michelson, state that I am the named applicant of the above-identified application and am the sole inventor of the subject matter described and claimed therein. Prior to February 10, 1993, I had completed in this country the invention as described and claimed in the above-identified application as evidenced by the attached seven (7) photographs of an instrument set, which I had manufactured at my direction prior to February 10, 1993. The photographs disclose instruments including the subject matter claimed in pending claims 172-206 and 331 directed to a hollow tubular guard having "a flat portion between at least some of said spine engaging portions", in pending claims 248-288 directed to a hollow tubular guard having "a flat portion between at least some of said extensions", and in pending claims 207-247 and 289-330 directed to a hollow tubular guard having spine engaging portions "substantially in line with said sides of said guard so that said spine engaging portions do not substantially increase the outer cross sectional dimension of said guard near the distal end of said guard."

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

April, 1, 2005  
Date

  
Gary Karlin Michelson